



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BOMET

CRIMINAL CASE NO 7 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

ERICK KIPNGETICH YEGON.....ACCUSED

RULING ON SENTENCE

1. The Accused Erick Kipngetch Yegon was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. He was alleged to have murdered his brother Gilbert Kipkirui Yegon.

2. The trial proceeded before Muya J who heard 5 witnesses. When the matter came up before me for directions on 27<sup>th</sup> October 2020, defence counsel told the court that they had requested a plea bargain whereby the court granted an adjournment to enable the parties enter plea negotiations.

3. The parties filed a plea agreement on 9<sup>th</sup> February 2021 which agreement the court found acceptable after being satisfied that the Accused entered voluntarily and understood his rights under Section 137A of the Criminal Procedure Code. The Accused subsequently pleaded to the lesser charge of manslaughter contrary to Section 202 as read with Section 205. He was convicted on his own guilty plea on 16<sup>th</sup> March 2021.

4. The facts of the case as presented by the prosecutor were as follows:-

***“On 18/4/2018 at about 8:30 pm, the deceased one Gilbert Kipkirui Yegon together with his two brothers Wesley Yegon and Cosmas Yegon arrived at their home and started demanding to know from the accused (their brother) why he had threatened to kill their father one Joseph Koskei. The father who was within the compound heard the altercation between his sons who were then trying to forcefully enter the compound. The father accosted them and a fight ensued. The accused dashed into the house and came out with a knife (MFI 2) (Exhibit 2) which he used to stab the deceased several times on the abdomen, shoulder and back causing the deceased to fall down. His brothers subdued him and took away the knife. They rushed his father to Siongiroyi hospital where he was pronounced dead on arrival. The accused person’s brothers went and reported to the police who immediately visited the scene. They recovered a stick (MFI 1) now exhibit No. 1 and on further investigations, they recovered a jeans trouser (MFI 3) now Exhibit No. 3 and a light green shirt MFI 4 (Exhibit 4) Blood stained clothes worn by the deceased. Investigations were commenced and the charge of murder was preferred.*”**

***The prosecutor and the accused entered a plea negotiation in which the accused pleaded guilty to the offence of manslaughter.”***

5. The Accused accepted the facts as being true and the court confirmed his guilty plea.

6. At the sentence hearing on 27<sup>th</sup> April 2021, Ms. Chepkemoi for the Accused prayed for leniency in sentencing the Accused. She submitted that the Accused was deeply remorseful and understood the consequences of his action. She stated that he was a law abiding citizen prior to the incident. Counsel prayed for a non-custodial sentence.

7. With respect to the victim impact statement, Counsel submitted that the parents of the Accused were also the victims of the offence and they had forgiven the Accused. She told the court that they were present in court and having lost one son to death, they did not wish to lose another to prison.

8. In his direct address to the court, the Accused prayed for a non-custodial sentence so as to go and take care of his children.

9. A pre-sentence Probation Officer's report was filed on 12<sup>th</sup> April 2021. The report confirms that the Accused and the deceased were siblings and that the target of the Accused's attack was their father and not the deceased. The report further details that the Accused's family had forgiven him and were ready to undertake traditional cleansing if he was released. The report recommends a non-custodial sentence.

10. I have considered the facts of the case, the mitigation and the Probation Officer's pre-sentence report. I have also paid due consideration to the sentencing guidelines and principles.

11. The purposes of sentencing as stated in **The Judiciary Policy Sentencing Guidelines (2014)** are:-

*(i) Retribution: to punish the offender for his/her criminal conduct in a just manner.*

*(ii) Deterrence: to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.*

*(iii) Rehabilitation: to enable the offender reform from his/her criminal disposition and become a law abiding person.*

*(iv) Restorative justice: to address the needs arising from the criminal conduct such as loss and damages.*

*(v) Community protection: to protect the community by incapacitating the offender.*

*(vi) Denunciation: to communicate the community's condemnation of the criminal conduct.*

These purposes are not exclusive in themselves and their application is dependent on the unique circumstances of each case.

12. In **Republic .V. Priscilla Cherono Chebet & 2 Others Nairobi Criminal Case No. 65 of 2011**, this court cited the court of Appeal decision in **Thomas Mwambu Wenyi Vs. Republic (2017) eKLR** which restated the objectives and principles of sentencing thus:-

*“Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straight jacket formula for sentencing an accused person on proof of crime. The courts have evolved certain principles: twin objective of sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstance of each case and the courts must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances. The principle of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.”*

13. In this case, the facts of the case demonstrate that the Accused wanted to attack his father because the father had not yielded to his demand to be given land. That the deceased fell victim only because he, together with two other brothers, were trying to restrain him from attacking their father. The facts therefore demonstrate that the Accused was a person given to extreme violence and around whom family members may not be safe. The probation report also states that he was given to alcoholism.

14. This court takes cognizance of the Accused's father's plea that he, together with the family, had forgiven the Accused and that since they had lost one son, they did not wish to lose a second one to prison.

15. This court however is of the considered view, taking into consideration all the factors in this case, that the Accused shall benefit from a rehabilitative custodial sentence. This court has further considered that the Accused entered into a plea agreement albeit mid way through the trial and has therefore saved judicial time and resources.

16. In the end, I sentence the Accused to serve 7 years imprisonment from today. In sentencing the Accused, I have taken into account the time he has already spent in pre-trial custody.

17. Orders accordingly.

**SENTENCE DELIVERED, DATED AND SIGNED THIS 29TH DAY OF JULY, 2021.**

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**R. LAGAT KORIR**

**JUDGE**

**Sentence delivered in the presence of the Accused, Mr. Mugumya holding brief for defence Counsel Ms. Chepkemoi, Mr. Murithi for the DPP, and Kiprotich (Court Assistant).**